

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES H. BRADY,

Plaintiff,

-v-

IGS REALTY CO. L.P. and PHILIPPE IFRAH,

Defendants.

19 Civ. 10142 (PAE)

JAMES H. BRADY,

Plaintiff,

-v-

MARK S. FRIEDLANDER, ESQ., *et al.*,

Defendants.

19 Civ. 10622 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has received and considered plaintiff James H. Brady’s letter, submitted September 4, 2020, regarding the Court’s imposition of a filing injunction. *See* Dkt. 49 (“Pl. Ltr.”).¹ On July 20, 2020, U.S. Magistrate Judge Ona T. Wang issued a report and recommendation recommending the dismissal of Brady’s claims and considering the imposition of a filing injunction on him. *See* Dkt. 30 (“Report”) at 30. The same day, Judge Wang issued an order to show cause, directing Brady to “show cause by letter on or before August 19, 2020, why the Court should not recommend that Judge Engelmayer enter a filing injunction.” Dkt. 31 (“OTSC”). The Report also states that, “[a]fter Brady has responded to the [OTSC], the Court will issue a subsequent report and recommendation to Judge Engelmayer.” Report at 30.

¹All citations to the docket in this order refer to case number 19 Civ. 10142.

On August 7, 2020, the Court received Brady’s objections to the Report. *See* Dkt. 38. On August 17, 2020, Brady filed his opposition to the contemplated filing injunction. *See* Dkt. 40. By August 21, 2020, each defendant responded to Brady’s objections to the Report. Construing the Report to recommend—rather than merely contemplate—the imposition of a filing injunction, the Court understood all issues in the case to have been fully submitted as of that date. Accordingly, on September 3, 2020, the Court issued a decision addressing both the merits of Brady’s claims and the imposition of a filing injunction. *See* Dkt. 48 (“September 3 Decision”).

The following day, September 4, 2020, Brady wrote the Court, alerting it to a discrepancy between the September 3 Decision and the Report. *See* Pl. Ltr. at 1–2. Brady noted that, although the Report stated that the Court “will issue” a subsequent report and recommendation specifically addressing the imposition of a filing injunction, the September 3 Decision bypassed such procedure and proceeded directly to considering—and imposing—a filing injunction on Brady. *See id.*

Brady is correct. The Court misunderstood the procedures anticipated by the Report. As a result, the Court erroneously treated the question regarding the imposition of a filing injunction as fully submitted after Brady’s August 17, 2020 response to the OTSC. In addressing that issue in the September 3 Decision, the Court therefore lacked the benefit of both Judge Wang’s subsequent recommendation, in light of Brady’s response to the OTSC, as well as any further objections any party might have to that recommendation. Given the Report’s language setting out the procedures governing this issue and the following OTSC, the Court’s September 3 Decision should not have proceeded to consider whether to impose a filing injunction. The Court thanks Brady for promptly notifying it of this error.


To ensure that all parties have a full, fair, and meaningful opportunity to be heard on the “serious matter” of a filing injunction, *Raffe v. Doe*, 619 F. Supp. 891, 898 (S.D.N.Y. 1985), the Court hereby orders as follows.

The Court withdraws its September 3, 2020 decision in its entirety. Contemporaneous with this order, the Court will issue an amended opinion that resolves only the merits of Brady’s claims, and does not address the imposition of any filing injunction. The Court reserves judgment on the need for a filing injunction, pending receipt of a report and recommendation from Judge Wang on that issue and objections received thereto from any party.

The Clerk of Court is respectfully directed to vacate the opinion and order at docket 48 in 19 Civ. 10142 and docket 70 in 19 Civ. 10622.

The Clerk of Court is further directed to mail a copy of this order to Brady.

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: September 8, 2020
New York, New York